



STAFF REPORT

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE BELMONT-SAN CARLOS FIRE DEPARTMENT

Honorable President and Board Members:

Summary

The South County Fire Authority Board recommends the Board of Directors of the Belmont Fire Protection District and the City Council of San Carlos approve an Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department in the form attached to this staff report. In addition, the Board asks you to determine whether a joint closed session of your Board and the San Carlos City Council should be required or merely optional at the start of each round of labor negotiations with the Fire Department's employees. A resolution is attached by which you may approve the amended JPA.

Background

As your Board is aware, the Belmont Fire Protection District and the City of San Carlos are parties to a joint exercise of powers agreement (JPA) which created the South County Fire Authority (SCFA). For the past year, the two parties have been in discussions regarding the future of the Authority. On May 3, 2006 this Board approved a letter agreement with San Carlos laying a path forward for the Department. In summary, that letter agreement provides for the Authority to be replaced by the Belmont-San Carlos Fire Department under an amended JPA, for the two communities to propose Fire Suppression Benefit Assessments to their property owners to provide funding needed to fund the Department's essential services and, upon approval of those assessments, to replace the current 50/50 funding formula with a formula that looks to assessed valuation of properties in the two communities, call volume, the number of engine and truck companies in each community, and the number of fire stations and firefighters in each community. In the initial year, that formula will produce a funding split of 47% for the District and 53% for San Carlos.

The attached amended and restated JPA was jointly prepared by Belmont Special Counsel Michael Colantuono, San Carlos Special Counsel Joan Cassman, and Authority General Counsel Jean Savaree. It was presented to the SCFA Board on May 31st. That Board made certain amendments to the attorneys' draft (shown in redline-strikeout text in the attachment) and unanimously recommended that your Board and the San Carlos City Council approve the amended and restated JPA. Tonight's agenda item affords you an opportunity to do so.

The next major steps in the process of reframing the Belmont-San Carlos Fire Department for the future are the adoption of a budget for the coming fiscal year (which will also require action by this Board) and the presentation of assessments to property owners in the two communities. Under the JPA provided here, each Member Agency must propose the fire assessments before August 15, 2006 (JPA Section 6.1).

Discussion

Although the amended and restated JPA is largely self-explanatory, a few provisions bear mention here.

The “*Funding Effective Date*” (JPA Section 1.1 at page 2) is the point at which the funding formula shifts from the current 50/50 arrangement to the formula attached to the JPA as Exhibit C. The SCFA Board amended the language at the May 31st meeting to ensure that the funding formula would change no later than 45 days after the two measures are approved. In hindsight, the drafting we did at the May 31st Board meeting on this point resulted in a somewhat complicated sentence. The meaning of that section is as follows: The “Funding Effective Date” is the earlier of (i) the date assessments are due under an assessment imposed by the Belmont-San Carlos Fire Department (which is not expected to occur); (ii) the second of the two dates that assessments are first due under assessments imposed separately by the District and San Carlos (which may be the same day and should be within a few days of one another). The last phrase of the definition, however, requires that the Funding Effective Date occur, even if assessment bills are not yet due, no later than 45 days after the second of the two assessments to be approved has been approved. If either or both assessments fail, the Funding Effective Date will not occur.

Section 2.3 states that the *effective date of the new JPA* will be July 1, 2006.

Section 2.4 states that *the JPA must continue to exist (on paper at least) until any debts the Department incurs are paid*. This language is necessary boilerplate to allow the JPA (with approval of the District and San Carlos) to borrow, such as a truck financing lease, for example. Continued service by the Department is not the same thing as legal existence of a paper entity, however, and the District and San Carlos can withdraw from the agreement as provided in Section 3.3 even while the paper entity remains in technical existence to pay off its debts.

Since the May 31st SCFA Board meeting, Special Counsel for San Carlos has raised the issue as to whether the words “and the Members” should be deleted in this provision. This phrase could raise the question as to whether, upon termination, the Member Agencies may assume some responsibility for the debts of the Department, which no one intends. So long as the drafting history and intent as to this Section is clear that the reference here to “Members” means only that prior to termination, the Members must be current in their obligations to the Department, but Members are NOT responsible for the obligations of the Department, the current language is fine.

Section 3.2(c) is an essential, if boilerplate, provision that provides that *the District and San Carlos are not responsible for the debts, liabilities and obligations of the Department*; these are legally distinct entities. Section 3.2(d) requires the Department to indemnify the District and San

Carlos from any liabilities arising from Department activities, and reinforces this point.

Section 3.2(f) requires the District and San Carlos to *review the JPA* not less than every four years.

Section 4.1(d) authorizes, but does not require, your Board and the San Carlos City Council to appoint an *alternate Boardmember* of the Department to serve when a Boardmember is absent.

Section 4.2 states the “*major decisions*” of the Department which require the consent of your Board and the City Council of San Carlos. These include annual budgets, labor agreements, the issuance of debt, a change in service levels mid-year over those reflected in an approved budget, and admission of another City to the JPA.

Under Section 4.8, Belmont’s *Finance Director and Treasurer* will continue to play those roles for the Department. Under Section 4.11, Belmont will continue to provide *finance and human resources services* to the Department. Under Section 5.1, San Carlos will continue to provide *office space* to the Department. All of these relationships can be revisited in the future at the request of either community or the Department, without need for an amendment to the JPA.

Section 4.10 provides that the *Department’s Board will hire, fire and supervise the Fire Chief* rather than the City Managers of Belmont and San Carlos. The City Managers retain a consulting role under this section with respect to “major decisions.”

Section 5.5 states that the number of fire stations will remain at the present number of two per community and that changes in *stations and service delivery* are major decisions requiring the consent of this Board and the San Carlos City Council

Section 6.1 states that the Department or Members will “propose” a measure or measures before August 15, 2006. But it is not clear exactly what “propose” means in this context. On May 31st, it was suggested that “propose” means placing the matter before property owners via assessment ballots. If that means actually issuing ballots, under the most recent timetable, such an interpretation would leave less than 5 days of “breathing room” since the ballots are not scheduled to go out until August 10th. Thus, it seems clear that what was intended was that your Board and the San Carlos City Council approve the Resolution of Intent, which are scheduled to occur on July 24 and 25, which will direct staff to thereafter issue the ballots. This interpretation is the consensus among staff and counsel of the District, San Carlos, and SCFA as to the intent of the SCFA Board’s action on the 31st with respect to this provision of the JPA.

Article 7 is new and provides rudimentary *dispute resolution provisions*. Section 7.1 requires the District and San Carlos to negotiate their differences in good faith. Section 7.2 provides means to address ties that may arise in the Department’s 4-member Board. If a tie vote occurs, the maker of the motion may withdraw his or her motion. If he or she does not, then any member of the Department’s Board may require the Department to implement one or more of three tie-breaking processes: (1) the matter can be reagendaized for Board discussion; (2) the Board can attempt to resolve the tie for 60 days or any shorter period the Board agrees upon; or (3) the

matter can be referred to the District and San Carlos for resolution. Any Boardmember can require any one or more of these options to be pursued. If all three were to be invoked by one or more Boardmembers in a given dispute, then all three options would be pursued in the order they are stated here: reagendizing for Board discussion, Board resolution efforts, and referral to the District and San Carlos.

Article 8 governs *labor relations* and requires a choice of your Board. Section 4.2 makes the approval of a labor agreement or MOU a major decision regarding a recommendation from the Board to Belmont and San Carlos and approval by your Board and the San Carlos City Council. Section 8.3 of the JPA, as proposed by the union which represents the SCFA's rank and file employees, requires that the negotiation of each MOU (which might be every few years if multiple-year labor agreements are reached, but might be as frequent as annually if one-year MOUs are relied upon) begin with a joint closed session of your Board and the San Carlos City Council.

The SCFA Board received legal advice and advice from its labor relations staff that this may not be a good idea. It may make negotiations cumbersome and could expose the Department to charges of bad faith negotiations if it made a proposal before convening a joint closed session or if it fails to make a timely proposal due to difficulties in quickly convening such a session. The SCFA Board did not resolve whether this provision should be mandatory (using the word "shall" in the third line of Section 8.3) of optional (using "may"). The SCFA Board referred this question to your Board and the San Carlos City Council. In order to avoid a need for a further SCFA Fire Board meeting on this subject, staff recommends that your Board agree that this provision may be optional but direct that it be mandatory if your Board is so inclined *and* if the San Carlos City Council also agrees that it should be so. If the two legislative bodies are not committed to these joint closed sessions, staff recommends against requiring them, as there can be serious legal problems if this provision appears in the JPA and the joint closed sessions do not occur.

Fiscal Impact

Approval of the amended JPA in and of itself will have no effect on the finances of the District. Approval of the FY 2006-07 budget for the Department and the success of assessments to fund it will change the funding formula for the Department from the present 50/50 arrangement to the formula attached to the JPA as Exhibit C. The dollar impact of this change and the ultimate fiscal impact on the District will turn on decisions that remain to be made regarding the FY 2007-07 Department budget and the success or failure of the assessment proposals.

Public Contact

This report and the attached JPA and resolution were made available for public review and comments along with the agenda and agenda packet for this evening's meeting in the City's usual practice.

Recommendation

Staff recommends your Board:

1. Determine whether Section 8.3 (labor relations) of the amended JPA should use the word “shall” or “may” with respect to joint closed sessions;
2. Waive full reading and adopt Resolution No. _____ to approve the Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department and authorize the Mayor and City Clerk to execute that Agreement.

Alternatives

1. Reject the proposed amended and restated JPA and give direction to staff.
2. Continue the item.
3. Approve the amended and restated JPA with additional amendments directed by your Board and direct staff to seek San Carlos’ and the SCFA Board’s agreement to those changes.

Attachments

- A. Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department (with its Exhibits A – C).
- B. Resolution of the Belmont Fire Protection District Approving the Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department.
- C. May 3, 2006 Letter Agreement with City of San Carlos.

Respectfully submitted,

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AMENDED AND RESTATED JOINT EXERCISE OF POWERS

AGREEMENT FOR THE

BELMONT-SAN CARLOS FIRE DEPARTMENT

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**AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR
THE BELMONT-SAN CARLOS FIRE DEPARTMENT**

THIS JOINT EXERCISE OF POWERS AGREEMENT ("Agreement"), is made and entered as of the ____ day of _____, 2006 by and between the City of San Carlos ("San Carlos") a general law city and the Belmont Fire Protection District ("Belmont"), a fire-protection district, each duly organized and existing in the County of San Mateo, State of California under the constitution and laws of the state and individually or collectively called Member or Members.

WITNESSETH:

WHEREAS, each of the Members is legally responsible for the provision of fire protection services within its respective jurisdiction; and

WHEREAS, the Joint Exercise of Powers Act (Government Code 6500 et seq, the Act) provides that two or more public agencies may by agreement jointly exercise any powers common to the parties to the agreement and may by that agreement create an entity which is separate from the parties to the agreement; and

WHEREAS, pursuant to the Joint Exercise of Powers Agreement dated July 1, 1979, the Members formed the "South County Fire Protection Authority," a joint powers authority created pursuant to the Act; and

WHEREAS, the Members each delivered notice to the other of its intention to terminate the South County Fire Authority as of June 30, 2006; and

WHEREAS, as a result of lengthy negotiations, the Members both desire to continue receiving their fire services from a restructured joint powers authority (JPA); and

WHEREAS, by this Agreement, the Members desire to amend and restate the prior joint powers agreement and to set forth new terms and conditions governing the management, operation, and financing of what will be called the Belmont-San Carlos Fire Department and to exercise the powers described herein and as provided by law.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1. Definitions. For the purposes of this Agreement, the following words shall have the following meanings:

"Act" means the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq., as they now exist or may hereafter be amended.

"Area" means the combined aggregate jurisdictional service areas of the Members as they now exist and as they may hereafter be modified by annexation of territory to or exclusion of territory from the boundaries of either of the Members. The combined aggregate service areas of the Members as they now exist are delineated on the map attached hereto as Exhibit A and hereby made a part of this Agreement.

"Agreement" means this Joint Exercise of Powers Agreement.

"Belmont" means the Belmont Fire Protection District, a subsidiary district of the City of Belmont duly organized and existing in the County under the Constitution and laws of the state.

"Board of Directors" or "Board" means the governing body of the Department.

"Bonds" means bonds, notes or other obligations of the Department issued pursuant to any provision of law which may be used by the Department for the authorization and issuance of bonds, notes or other obligations.

"Bond interest and redemption expenses" means those sums of money required to be expended

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by the Department from any bond interest and redemption fund to be established and maintained by the Department for the payment of principal of and interest on bonds (if any) issued pursuant to this Agreement.

“Bond Law” means Article 2 of the Act, as now or hereafter amended, or any other law hereafter legally available for use by the Department in the authorization and issuance of bonds to finance needed public facilities or services.

“Controller” means the Controller of the Department designated pursuant to Section 4.8 of this Agreement.

“County” means the County of San Mateo, State of California.

“Department” means the Belmont-San Carlos Fire Department, the joint powers authority established by this Agreement as authorized by Government Code Section 6503.5.

“Fiscal year” means the period from July 1st to and including the following June 30th, or such other period as the Board may specify by resolution.

“Funding Effective Date” means the date on which payment is first due to the Department as shown on a bill, if one revenue measure is proposed by the Department, or the later of the first due dates as shown on bills, if measures are proposed by each of the Members and, provided that both measures are approved, the Funding Effective date shall be no later than 45 days after the approval of the later of the two measures to be approved by property owners.

“Joint Facilities” means all existing fire-protection facilities, equipment, resources and property to be managed and operated by the Department pursuant to Sections 2.2 and 5.4 hereof, and, if and when acquired or constructed, any improvements and additions thereto and any additional facilities or property acquired or constructed by the Department or either of the Members.

“Major Decision” is defined in Section 4.2 of this Agreement.

“Measure” or “Measures” means a revenue measure proposed in the twelve months following the effective date of this Agreement by the Department or two revenue measures, one proposed by each Member in the twelve months following the effective date of this Agreement, to assist the Members in funding their financial obligations to the Department under this Agreement. If two revenue measures are proposed, “success of the measure” shall mean successful approval of both measures within the twelve months following the effective date of this Agreement as specified in Section 2.3.

“Member” means each party to this Agreement.

“Operating Fund” is defined in Section 5.4 of this Agreement.

“Party” means a Member.

“San Carlos” means the City of San Carlos, a municipal corporation and general law city duly organized and existing in the County under the constitution and laws of the state.

“Secretary” means the secretary of the Department appointed pursuant to Section 4.7 of this Agreement.

“State” means the State of California.

“Treasurer” means the Treasurer of the Department designated pursuant to Section 4.8 of this Agreement.

ARTICLE II GENERAL PROVISIONS

Section 2.1. Belmont-San Carlos Fire Department. (a) Pursuant to Section 6503.5 of the Act, the parties hereby recognize and confirm the continued existence of a public entity separate and independent from the Parties hereto, hereafter to be known as the “Belmont-San Carlos Fire Department,” pursuant to the terms and conditions set forth in this Agreement.

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(b) Within thirty (30) days after the effective date of this Agreement and after any amendment, the Department shall cause a notice of such Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by California Government Code Section 6503.5.

(c) Within ten (10) days after the effective date of this Agreement, the Department shall cause a statement of the information concerning the Department, required by California Government Code Section 53051, to be filed with the office of the California Secretary of State and with the County Clerk, amending and clarifying the facts required to be stated pursuant to subdivision (a) of Government Code Section 53051.

Section 2.2. Purpose. The purpose of the Department is to exercise the common powers of the Members to manage, operate and maintain the Joint Facilities and to implement the financing, acquiring and constructing of additions and improvements to the Joint Facilities to provide the Area with efficient and economical fire protection service, and, if necessary, to issue and repay Bonds of the Department. Each of the Members is authorized to exercise all such powers (except the power to issue and repay revenue Bonds of the Department) pursuant to its organic law and the Department is authorized to issue and provide for the repayment of Bonds pursuant to the provisions of the Bond Law or other applicable law.

Section 2.3. Effective Date. This Agreement shall be effective as of July 1, 2006.

Section 2.4. Term. This Agreement shall continue in effect until such time as all of the following have occurred: (i) all Bonds, if any, and the interest thereon issued by the Department under the Bond Law, the Act or other applicable law have been paid in full or provision for such payment shall have been made, (ii) the Department and the Members shall have paid all sums due and owing pursuant to this Agreement or pursuant to any contract executed pursuant to this Agreement, and (iii) dissolution has occurred pursuant to Section 3.3.

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ARTICLE III

POWERS AND OBLIGATIONS OF DEPARTMENT

Section 3.1. General Powers. The Department shall have the power in its own name to exercise any and all common powers of its Members reasonably related to the purposes of the Department, including, but not limited to, the powers to:

- (a) Seek, receive and administer funding from any available public or private source, including grants or loans under any available federal, state and local programs for assistance in achieving the purposes of the Department;
- (b) Contract for the services of engineers, attorneys, planners, financial and other necessary consultants;
- (c) Make and enter into any other contracts;
- (d) Employ agents, officers and employees;
- (e) Acquire, lease, construct, own, manage, maintain, dispose of or operate (subject to the limitations herein) any buildings, works or improvements;
- (f) Acquire, hold, manage, maintain, or dispose of any other property by any lawful means, including without limitation gift, purchase, eminent domain, lease, lease-purchase, license or sale;
- (g) Incur all authorized debts, liabilities, and obligations, including issuance and sale of bonds, notes, certificates of participation, bonds authorized pursuant to the Marks-Roos Local Bond Pooling Act of 1985, California Government Code Sections 6584 et seq. (as it now exists or may hereafter be amended) or any other legal authority common to the Members and such other evidences of indebtedness, subject to the limitations herein; and

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- (h) Receive gifts, contributions and donations of property, funds, services and other forms of financial or other assistance from any persons, firms, corporations or governmental entities; and
- (i) Sue and be sued in its own name; and
- (j) Seek the adoption or defeat of any federal, state or local legislation or regulation necessary or desirable to accomplish the stated purposes and objectives of the Department; and
- (k) Adopt rules, regulations, policies, bylaws and procedures governing the operation of the Department;
- (l) To invest any money in the treasury pursuant to California Government Code Section 6505.5 that is not required for the immediate necessities of the Department, as the Department determines is advisable, in the same manner and upon the same conditions as local agencies, pursuant to Section 53601 of the California Government Code as it now exists or may hereafter be amended;
- (m) Carry out and enforce all the provisions of this Agreement; and
- (n) Exercise all other powers not specifically mentioned herein, but common to Members, and authorized by California Government Code Section 6508 as it now exists or may hereafter be amended

Section 3.2. Specific Powers and Obligations.

- (a) Audit. The records and accounts of the Department shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the State Controller, the County Auditor, and shall be provided to each Member no later than fifteen (15) days after receipt of such audit reports by the Department.
- (b) Securities. The Department may use any statutory power available to it under the Act and any other applicable laws of the State of California, whether heretofore or hereinafter enacted or amended, for issuance and sale of any revenue bonds or other evidences of indebtedness necessary or desirable to finance the exercise of any power of the Department, and may borrow from any source including, without limitation, the federal government, for these purposes.
- (c) Liabilities. The debts, liabilities and obligations, whether contractual or non-contractual, of the Department shall be the debts, liabilities and obligations of the Department alone, and not the debts, liabilities and obligations of the Members.
- (d) Hold Harmless and Indemnification. To the fullest extent permitted by law, the Department agrees to save, indemnify, defend and hold harmless each Member from any liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees, where the same arise out of, or are in any way attributable in whole or in part, to negligent acts or omissions of the Department or its employees, officers or agents or the employees, officers or agents of any Member while acting within the course and scope of an agency relationship with the Department.
- (e) Manner of Exercise. For purposes of California Government Code Section 6509, the powers of the Department shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon the City of San Carlos, a general law city.
- (f) Review of Agreement. This Agreement shall be reviewed every four (4) years by the Members, but its terms and conditions may be reviewed more frequently whenever the Members agree to do so.

Section 3. 3. Dissolution of Department.

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(a) Notice. If the Measure is not successful, either Member can dissolve the Department effective June 30, 2007 by giving written notice prior to December 31, 2006. If the Measure is successful, the Department shall dissolve, and its assets be distributed in accordance with the provisions of this Agreement, upon written notice by either Member of its intention to dissolve the Department, provided that such notice shall be given eighteen (18) months prior to the date of dissolution.

(b) Distribution of Funds and Property. If either Member gives notice of its intent to dissolve the Department pursuant to Section 3. 3(a) above, any remaining funds, property or other assets of the Department, including all revenues generated by the Measure, following discharge of all debts, liabilities and obligations of the Department, shall be distributed to the Members. The formula used to pay off any remaining unfunded liabilities at the time of dissolution, as well as to divide the assets, shall be (i) equal shares between or among the Members until the Funding Effective Date or (ii) the average of the annual funding formulas that have been in effect from the Funding Effective Date through the fiscal year in which notice of intent to dissolve the Department is given. If the Measure is successful and Belmont thereafter gives notice of its intent to dissolve the Department prior to July 1, 2016, it shall also make payments to San Carlos as shown in the schedule attached hereto as Exhibit B. The Members acknowledge that the real property used by the Department as of the effective date of this Agreement is owned by the Members and will not be distributed according to this formula, but shall remain vested in the Member which owns each parcel.

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ARTICLE IV

ORGANIZATION, GOVERNANCE AND FUNCTIONS OF DEPARTMENT

Section 4.1. Governing Board. (a) The Board shall govern the District in accordance with this Agreement and shall have two (2) Boardmembers per Member. Two (2) Board members shall be appointed by the legislative body of each Member from among the members of that legislative body. Each Boardmember shall serve for a term of one calendar year, although a Boardmember may be removed during his or her term or reappointed for multiple terms at the pleasure of the appointing authority.

(b) All voting power of the Department shall reside in the Board.

(c) Each Boardmember shall cease to be a member of the Board when such member ceases to hold office on the legislative body of the Member that appointed him or her. Vacancies shall be filled by the respective appointing Member in the same manner as initial appointments.

(d) The legislative body of each Member may appoint an alternate member of the Board who shall serve in the absence of either Boardmember representing the Member for which the alternate is appointed. Alternates have no voting power other than when serving for an absent Boardmember.

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Section 4.2. Major Decisions; Tie Votes. Major decisions are: approval or amendment of an annual budget; approval or amendment of labor agreements; declaring impasse in labor negotiations; approving changes in the level of service during a fiscal year from the levels specified in the approved budget; issuing a Bond or incurring any other debt in excess of \$100,000 in 2006 dollars, to be adjusted annually according to the San Francisco Consumer Price Index for All Urban Consumers, which is not expected to be repaid within twelve months; and accepting another public agency as a Member. The Board may not take final action on Major Decisions without the prior consent of all Members following a recommendation to those Members by the Board. The Board may refer items other than Major Decisions to the Members

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for review and direction prior to taking action if the Board so desires and shall refer to the Members any decision as to which a tie persists among the Boardmembers as provided in Section 7.2 below.

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Section 4.3. Compensation and Expense Reimbursement. All Board members shall receive a stipend per meeting attended as the Member's voting representative upon the enactment of a resolution of the Board to authorize such stipends. Each Board member shall be reimbursed for reasonable and necessary expenses actually incurred in the conduct of the Department's business, pursuant to an expense reimbursement policy established by the Board in full accordance with all applicable statutory requirements.

Section 4.4. Voting. All actions of the Board shall require the vote of at least three (3) Board members present and voting. Board members may not cast proxy or absentee votes. Each member shall have an equal vote. Tie-breaking procedures are specified in Section 7.2 below.

Section 4.5. Conflicts of Interest.

(a) Political Reform Act. Board members shall be considered "public officials" within the meaning of the Political Reform Act of 1974, as amended, and its regulations, for purposes of financial disclosure, conflict of interest and other requirements of such Act and regulations, subject to a contrary opinion or written advice of the California Fair Political Practices Commission. The Department shall adopt a conflicts of interest code in compliance with the Political Reform Act.

(b) Levine Act. Board members are "officials" within the meaning of California Government Code Section 84308 et seq., commonly known as the "Levine Act," and subject to the restrictions of such act on the acceptance, solicitation or direction of contributions.

Section 4.6. Board Meetings

(a) Time and Place. The Board shall meet at the principal office of the Department, or at such other place designated by the Board if notice is provided in the manner of notice of an adjourned meeting under the Ralph M. Brown Act, California Government Code Section 54950 et seq. The time and place of regular meetings of the Board shall be designated by resolution adopted by the Board, a copy of which shall be furnished to each Member at least ten (10) days prior to the next such regular meeting.

(b) Call and Conduct. All meetings of the Board shall be called and conducted in accordance with the provisions of the Ralph M. Brown Act and other applicable law.

(c) Quorum. Three (3) Board members shall constitute a quorum of the Board required to conduct the business of the Department.

(d) Rules. The Board may adopt from time to time such bylaws, rules, and regulations for the conduct of meetings of the Board and of the affairs of the Department as are consistent with this Agreement and other applicable law.

(e) Minutes. The Secretary shall cause minutes of all meetings of the Board to be drafted and mailed to each Member promptly after each meeting. Upon approval by the Board, such minutes shall become a part of the official records of the Department.

Section 4.7. Officers. (a) The Board shall elect a Chair and Vice-Chair from among its members, and shall appoint a Secretary who may, but need not, be a member of the Board. The Chair and Vice-Chair shall serve for a term of one year or such other period of time as may be designated in rules or bylaws established by the Board. The officers shall perform the duties normal to said offices as described below.

(b) Chair. The Chair shall preside over all meetings of the board and shall sign all contracts on behalf of the Department, except contracts that the Board may authorize the Fire Chief or

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another officer, agent or employee of the Department to sign. The Chair shall perform such other duties as may be imposed by the Board in accordance with law and this Agreement.

(c) Vice-Chair. The Vice-Chair shall act, sign contracts and perform all of the Chair's duties in the absence of the Chair.

(d) Secretary. The Secretary shall countersign contracts signed on behalf of the Department, and shall be the official custodian of all records of the Department. The Secretary shall attend to such filings as required by applicable law. The Secretary shall perform such other duties as may be imposed by the Board.

Section 4.8. Controller and Treasurer. The Finance Director of Belmont and City Treasurer of Belmont are hereby initially designated as the Controller and Treasurer, respectively, of the Department. The Treasurer shall be the depositary and shall have custody of all of the accounts, funds and money of the Department from whatever source. The Controller and the Treasurer shall perform the duties and functions and shall assume the obligations and authority set forth in Sections 6505 and 6505.5 of the Act and shall ensure that there shall be strict accountability of all funds and reporting of all receipts and disbursements of the Department. The Board may appoint other persons possessing the qualifications set forth in Government Code Section 6505.5 to either or both of these offices with the approval of all Members.

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Section 4.9. Legal Advisor. The Board shall appoint a legal advisor for the Department who shall perform such duties as may be prescribed by the Board. Subject to such provisions of the Rules of Professional Conduct and other law as may apply, the City Attorney of San Carlos or the General Counsel of Belmont may serve as Legal Advisor for the Department.

Section 4.10. Fire Chief. The Board shall hire, evaluate, and terminate the Fire Chief, who shall be the chief executive officer of the Department and shall report to the Board. The Fire Chief shall have the power to hire, evaluate and discharge all subordinate employees of the Department. The Fire Chief shall consult with the City Managers of Belmont and San Carlos on every Major Decision prior to presentation of these items to the Board for action but any alleged failure to do so shall have no effect on the validity of action taken provided that the Major Decision is approved by the Board and the Members as required by this Agreement.

Section 4.11. Finance and Human Resources. The Department shall initially contract with Belmont for finance and human resources services. These services shall be evaluated during each review of this Agreement as provided for in Section 3.2(f), or when directed by the Board. Upon any such review, Belmont and San Carlos may each submit a proposal for the Board's consideration and, if neither does so, the Board may contract with another qualified public entity to provide those services or retain staff to provide those services directly. A Member providing these services shall give the Department and the other Members six (6) months' written notice of its intention to cease providing these services.

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Section 4.12. Additional Officers and Consultants. The Board may appoint any additional officers deemed necessary or desirable. Such additional officers also may be officers or employees of a Member or of the Department. The Board may also retain such other consultants or independent contractors as may be deemed necessary or appropriate to carry out the purposes of this Agreement.

Section 4.13. Bonding Requirements. The officers or persons designated to have charge of, handle, or have access to any funds or property of the Department shall be so designated and empowered by the Board. Each such officer or person shall be required to file an official bond with the Department in an amount established by the Board. Should the existing bond or bonds of any such officer or persons be extended to cover the obligations provided herein, said bond

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shall be the official bond required herein. The premiums on any such bonds attributable to the coverage required herein shall be appropriate expenses of the Department. If it is prudent to do so, the Department may procure a blanket bond on behalf of all such officers and persons.

Section 4.14. Status of Officers and Employees. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of the Department when performing their respective functions within the territorial limits of a Member shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties under the provisions of this Agreement and Chapter 5 of Division 7 of Title 1 of the California Government Code, commencing with Section 6500. However, none of the officers, agents or employees appointed by the Board shall be deemed to be employed by any of the Members or to be subject to any of the requirements of such Members by reason of their employment by the Department.

Section 4.15. Committees. The Board may create permanent or ad hoc committees to give advice to the Board of Directors on such matters as may be referred to such committee by the Board. Qualified persons shall be appointed to such committees by the Board and each such appointee shall serve at the pleasure of the Board. All regular, adjourned and special meetings of such committees shall be called and conducted in accordance with the applicable requirements of the Ralph M. Brown Act, Government Code Section 54950 et seq., as it now exists or may hereafter be amended, and all other applicable law.

ARTICLE V OPERATIONS AND FACILITIES

Section 5.1. Principal Office. (a) The principal office of the Department shall initially be the current offices maintained by the South County Fire Protection Authority in the City of San Carlos. The Department may establish another principal office from time to time by resolution of the Board.

(b) The Department shall initially lease space for its principal office from San Carlos. This lease shall be evaluated during each review of this Agreement as provided for in Section 3.2(f), or when directed by the Board. Upon any such review, Belmont and San Carlos may each submit a proposal for the Board's consideration and, if neither does so, the Board may arrange to lease space from another landlord. A Member providing space shall give the Department and the other Members six (6) months written notice of its intention to cease providing that space.

Section 5.2. Assumption of Responsibilities by the Department. As soon as practicable after the effective date of this Agreement, the Members shall appoint their representatives to the Board and the Fire Chief shall give notice of an organizational meeting of the Board. At said meeting the Board shall provide for its regular meetings, shall elect a Chair and Vice-Chair, and shall appoint a Secretary as prescribed in Article IV. The Fire Chief shall give notice of an organization meeting of the Board annually thereafter.

Section 5.3. Delegation of Powers; Transfer of Records, Accounts, Funds and Property. Each of the Members hereby delegates to the Department the power and duty to maintain, operate, manage and control all of the fire protection facilities, equipment, resources and property of the former South County Fire Protection Authority, and of each of the respective Members within their territorial jurisdictions, as well as those a Member or the Department may acquire in the future, including without limitation all fire stations, land, buildings and fire-fighting equipment, and to employ the necessary personnel and to do any and all other things necessary or desirable to provide continued, efficient, and economical fire protection services to the Area. The

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facilities managed by the Department as provided in this paragraph constitute the Joint Facilities.

Section 5.4. Joint Fire Protection Maintenance and Operation Fund; Reserves and Capital. The Board shall assume responsibility and control over the joint fire protection maintenance and operation fund (herein called the “Operating Fund”) previously established by the South County Fire Protection Authority. Upon the organization of the Board, the Department shall assume responsibility for the improvement, alteration, maintenance and operation of the Joint Facilities and shall pay all personnel, contractual, and administrative expenses of the Department and all maintenance and operation costs of the Joint Facilities from that fund. Each of the Members shall pay into that fund its share of these costs of the Department as set forth in Article VI of this Agreement. The Department shall establish reasonable reserves and undertake appropriate capital projects to maintain the Joint Facilities as approved by the Members via annual budgets.

Section 5.5. Existing Scope of Joint Facilities and Services. Upon commencement of this Agreement, each Member shall have two (2) fire stations within its jurisdiction with a paramedic company at each location. Changes in the number of stations and the provision of paramedic and fire safety services at each station shall be specified in the annual budget, approval of which is a Major Decision.

ARTICLE VI

REVENUE MEASURE; BUDGET; FUNDING FORMULA AND OTHER FINANCIAL PROVISIONS

Section 6.1. Revenue Measure. Before August 15, 2006, the Department or its Members will propose a Measure or Measures to assist the Members to fund the Department.

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Section 6.2. Annual Budget. The Department shall adopt, as a Major Decision, an annual budget for each fiscal year. No expenditures may be made by or on behalf of the Department unless authorized by a budget or budget amendment approved as a Major Decision.

Section 6.3. Funding Formula. Prior to the Funding Effective Date, the Members shall bear the costs of the Department equally between them. From and after the Funding Effective Date, each Member shall pay for the ongoing costs of the Department according to the following formula, to be calculated annually when the budget is prepared: a) Twenty-Five percent (25%) of costs shall be assessed among the Members in proportion to the population in each of the Member’s jurisdiction as most recently determined by the U.S. Census and any intervening estimates prepared by the California Department of Finance when the Fire Chief prepares each annual budget; b) Twenty-Five percent (25%) of costs shall be assessed among the Members in proportion to the assessed value of property in each Member’s jurisdiction as most recently determined by the County Assessor when the Fire Chief prepares each annual budget; c) Fifty percent (50%) of costs shall be assessed among the Members based on the formula depicted in Exhibit C which turns on the numbers of fire stations, companies, and employees in each Member’s jurisdiction.

Section 6.4. Allocation of Expenses; Generally. After the Board approves submission of an annual budget to the Members, the Fire Chief shall forward that budget to each Member for approval, along with his or her calculation of the share to be borne by each Member under the formula stated in Section 6.3 above. Approval of the budget by the Members, shall also constitute approval of the allocation of the budget cost as calculated by the Fire Chief.

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Section 6.5. Expenditures Within Approved Annual Budget. All expenditures within the limitations of the approved annual budget shall be made in accordance with the rules, policies and procedures adopted by the Board.

Section 6.6. Disbursements. Warrants shall be drawn upon the approval and written order of the Board and the Board shall requisition the payment of funds only upon approval of claims, disbursements and other requisitions for payment in accordance with this Agreement and other rules, regulations, policies and procedures adopted by the Board.

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Section 6.7. Accounts. All funds will be placed in the Operating Fund and the receipt, transfer, or disbursement of such funds by the Controller and the Treasurer shall be accounted for in accordance with the generally accepted accounting principles applicable to governmental entities, with strict accountability of all funds. All revenues, expenditures and status of bank accounts and investments shall be reported to the Board as frequently as the Board shall direct and, in any event, not less than annually, pursuant to procedures established by the Board.

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ARTICLE VII

DISPUTE RESOLUTION

Section 7.1. Good Faith Negotiations. The Members acknowledge that differences between them and among the Boardmembers may arise from time to time and agree to make good faith efforts to resolve any such differences via good faith negotiations among the Members or Boardmembers, as the case may be. If such negotiations do not resolve a dispute, and no Member gives a notice to dissolve the Department as provided in this Agreement, then the Members shall resolve disputes in any manner permitted by law or in equity.

Section 7.2. Tie Votes. If a tie vote occurs on any matter considered by the Board, and the motion is not withdrawn by the Boardmember who made it, at the request of any Boardmember any or all of the following shall occur: (i) the matter shall appear on the agenda of at least one subsequent meeting of the Board; (ii) the Board shall attempt to resolve the tie for 60 days, or any shorter time determined by the Board; or (iii) the matter shall be referred to the Members for resolution.

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ARTICLE VIII

EMPLOYEE RELATIONS

Section 8.1. Employee Relations. The Board shall maintain as necessary Employer-Employee Relations Procedures and Personnel Rules and Regulations applicable to the Department. The Board may amend either or both items without referring the items to the Members.

Section 8.2. Annual Budget Issues. In conjunction with the annual budget process described above, the Board shall consider the following: cost allocation plan, service goals, service performance standards and labor relations agreement (MOU), unless a multi-year MOU is in place. Following Board consideration of any these items, it shall be referred to the Members for approval as a Major Decision.

Section 8.3. Bargaining. Bargaining under the Meyers-Milias-Brown Act shall proceed as set forth in this section. Employees of the Department are not employees of any Member. However, the legislative bodies of the Members [shall/may], as provided in Government Code section 54957.6, meet in a joint closed session to instruct the Board and staff negotiators. The Board and staff negotiators shall negotiate with the representatives of the Department's employees. After tentative agreement has been reached by the negotiating team and the representatives of the Department's employees, the Board shall recommend approval of the tentative agreement by the Members as a Major Decision.

Comment [nw1]: The Fire Board did not resolve whether this provision should be mandatory or optional and deferred that judgment to the two City Councils. Staff recommends that this be made optional unless both Councils agree to make it mandatory.

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ARTICLE IX

MISCELLANEOUS

Section 9.1. Amendments. This Agreement may be amended by the Parties at any time pursuant to a written amendment executed by the Parties.

Section 9.2. Notice. Any notice required to be given or delivered by any provision of this Agreement shall be personally delivered or deposited in the U.S. Mail, registered or certified,

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postage prepaid, addressed to the Members at their addresses as reflected in the records of the Department, and shall be deemed to have been received by the Member to which the same is addressed upon the earlier of receipt or seventy-two (72) hours after mailing.

Section 9.3. Attorney's Fees. In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of its actual and reasonable attorney's fees, costs and expenses incurred in the proceeding.

Section 9.4. Successors. This Agreement shall be binding upon and inure to the benefit of any successor of a Member.

Section 9.5. Assignment and Delegation. No Member may assign any rights or delegate any duties under this Agreement without the unanimous written consent of all other Members and any attempt to make such an assignment shall be null and void for all purposes.

Section 9.6. Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which together shall constitute a single agreement, and each of which shall be an original for all purposes.

Section 9.7. Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any applicable law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, or provisions of this Agreement shall not be affected thereby and to that end the parts, terms and provisions of this Agreement are severable.

Section 9.8. Integration. This Agreement represents the full and entire Agreement among the Members with respect to the matters covered herein.

Section 9.9. Execution. The legislative bodies of the Members have each authorized execution of this Agreement, as evidenced by the respective signatures attested below.

BELMONT FIRE PROTECTION DISTRICT

President

Attest:

Secretary

CITY OF SAN CARLOS

Mayor

Attest:



Exhibit A – Map of “Area”



Exhibit B – Belmont Post-Termination Payments



Exhibit C- Funding Formula



BELMONT FIRE PROTECTION DISTRICT RESOLUTION NO. _____

**RESOLUTION OF THE BELMONT FIRE PROTECTION DISTRICT
APPROVING THE AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR
THE BELMONT-SAN CARLOS FIRE DEPARTMENT**

WHEREAS, the City of San Carlos and the Belmont Fire Protection District are parties to a joint exercise of powers agreement (JPA) which created the South County Fire Authority (SCFA); and

WHEREAS, the two parties have been in discussions regarding the future of the Authority; and

WHEREAS, on May 3, 2006 this Board approved a letter agreement with San Carlos laying a path forward for the Department which provides for the Authority to be replaced by the Belmont-San Carlos Fire Department under an amended JPA; and

WHEREAS, an Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department was jointly prepared by counsel for San Carlos, counsel for the District, and counsel for the South County Fire Authority (SCFA); and

WHEREAS, after making certain amendments to the attorneys' draft, the SCFA Board approved that JPA on May 31st and unanimously recommended that the San Carlos City Council and this Board approve the amended and restated JPA.

NOW, THEREFORE, BE IT RESOLVED that the Belmont Fire Protection District does hereby:

1. Further amend the Amended and Restated Joint Exercise of Powers Agreement for the Belmont-San Carlos Fire Department to eliminate the word "shall" [or "may"] from the third sentence of Section 8.3;
2. Approve the Amended and Restated Joint Exercise of Powers Agreement as so amended; and
3. Authorize the President and Secretary to execute that Amended and Restated Joint Exercise of Powers Agreement as so amended on behalf of the District.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the Belmont Fire Protection District at a regular meeting thereof held on June 13, 2006 by the following vote:

AYES, DIRECTORS: _____

NOES, DIRECTORS: _____

ABSTAIN, DIRECTORS: _____

ABSENT, DIRECTORS: _____

APPROVED: _____
Secretary, Belmont Fire Protection District

President, Belmont Fire Protection District

